In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1349

WILLIAM SIMON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial to the court, petitioner was convicted of having wilfully attempted to evade his income tax for the years 1961, 1962, 1963 and 1964 (in violation of Section 7201 of the Internal Revenue Code) and of wilful filing of false excise returns between the second quarter of 1962 and the second quarter of 1965 (in violation of Section 7206(1)). The question presented by the petition is whether a special agent of the Internal Revenue Service's Intelligence Division investigating petitioner for criminal tax

fraud was required under *Miranda* v. *Arizona*, 384 U.S. 436, to warn petitioner that he had a right to the presence and assistance of counsel in the investigation.[1]

The district court found that the petitioner was neither in custody nor otherwise deprived of his freedom or coerced in any significant way, and therefore held that the requirements of *Miranda* did not apply (Pet. App. 4A-6A). The court of appeals affirmed (Pet. App. 2A-3A). This is in accord with the rule in the Ninth Circuit, *Feichtmeir* v. *United States*, 389 F. 2d 498, and in seven other circuits, *Morgan* v. *United States*, 377 F. 2d 507, 508 (C.A. 1); *United States* v. *White*, 417 F. 2d 89 (C.A. 2), certiorari denied, February 24, 1970, No. 898, this Term; *United States* v. *Squeri*, 398 F. 2d 785, 788-790 (C.A. 2); *Caiello* v. *United States*, 420 F. 2d 471 (C.A. 2), certiorari denied, April 20, 1970, No. 1243, this Term; *United States* v. *Mancuso*, 378 F. 2d 612, 619 (C.A. 4), certiorari denied, 390 U.S. 955; *Agoranos* v. *United States*, 409 F. 2d 833, 835 (C.A. 5), certiorari denied, 396 U.S. 824; *United States* v. *Miriani*, No. 19274 (C.A. 6), decided February 20, 1970; *United States* v. *Maius*, 378 F. 2d 716, 718-719

[1] The court of appeals noted that petitioner was "told at the outset that [the agent] was a criminal investigator for the Internal Revenue Service and [was] affirmatively advised of his right to remain silent * * *" (Pet. App. 2A). Petitioner also complains that the warning was insufficient in failing to advise him in terms that his statements "can and will" be used against him (Pet. 17); such terms are, however, of dubious applicability at the outset of a criminal tax investigation.

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(C.A. 6), certiorari denied, 389 U.S. 905; *Cohen* v. *United States*, 405 F. 2d 34 (C.A. 8), certiorari denied, 394 U.S. 943; *Hensley* v. *United States*, 406 F. 2d 481, 484 (C.A. 10).

Petitioner contends that these holdings, including the one in the case at bar, are in conflict with *United States* v. *Dickerson*, 413 F. 2d 1111 (C.A. 7), which upheld (2-1) a suppression order on the ground that a taxpayer must be given *Miranda* warnings "at the inception of the first contact with the taxpayer after the case has been transferred to the Intelligence Division" (p. 1117). In *Dickerson*, unlike the present case, the taxpayer was given no warnings whatever. And the Seventh Circuit made its holding applicable only to "interrogations taking place after the date of this decision," July 28, 1969 (p. 1117). Thus, even if the *Dickerson* rule were applied to the case at bar the statements and records obtained from petitioner in the investigation would not be suppressible because they were obtained in 1965 and 1966.

In view of the purely prospective nature of the *Dickerson* holding and the present policy of the Internal Revenue Service to give virtually full *Miranda* warnings to all taxpayers when they are first interviewed by a special agent,[2] there should be few, if

[2] By news release dated November 26, 1968, the Internal Revenue Service announced that henceforth a special agent on his first visit to a taxpayer must warn him of his constitutional rights, including the right to counsel, but not including the proffer of legal aid unless the taxpayer is in custody. The news release notes that this "new procedure goes beyond most legal requirements that are designed to advise persons of their rights." 1968 CCH Fed. Tax Reporter, par. 6946; 1968 Prentice-Hall Fed. Taxes, par. 55,476.

any, future cases which will meet a different fate in the Seventh Circuit than in any other circuit. See, *e.g.*, *United States* v. *Campione*, 416 F. 2d 486 (C.A. 7), certiorari denied, February 24, 1970, No. 876, this Term. The conflict therefore does not warrant futher review by this Court.

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JOHNNIE M. WALTERS,
Assistant Attorney General.

JOSEPH M. HOWARD,
CARLETON D. POWELL,
Attorneys.

APRIL 1970.

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